

Decision 18-04-005 April 26, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger Carriers,  
Ridesharing, and New Online-Enabled  
Transportation Services.

Rulemaking 12-12-011

**DECISION ON PHASE III.B. TRACKS II AND IV ISSUES: IS UBER  
TECHNOLOGIES, INC., A TRANSPORTATION NETWORK COMPANY  
AND/OR A CHARTER PARTY CARRIER**

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**DECISION ON PHASE III.B. TRACKS II AND IV ISSUES: IS UBER  
TECHNOLOGIES, INC., A TRANSPORTATION NETWORK COMPANY  
AND/OR A CHARTER PARTY CARRIER**

**Summary**

This decision finds that Uber Technologies, Inc. (Uber), the parent company of Rasier-CA, LLC (Rasier-CA), is a transportation network company (TNC) based on the plain meaning of a TNC. Alternatively, Uber controls Rasier-CA's TNC operations in California to such an extent that Rasier-CA is a mere instrumentality of Uber, such that Uber should be deemed a TNC.

This decision also finds that Uber, the parent company of Uber USA, LLC (Uber USA) and UATC, LLC (UATC), is a transportation charter party carrier (TCP) based on the plain meaning of a TCP. Alternatively, Uber controls Uber USA's and UATC's TCP operations in California to such an extent that Uber USA and UATC are mere instrumentalities of Uber, such that Uber should be deemed a TCP.

Uber must register as both a TNC and a TCP with the Commission.

Pursuant to Pub. Util. Code § 5387.5, Uber must pay all back fees for the three-year period prior to the issuance of this decision.

This proceeding remains open.

**1. Background**

**1.1. Decision 13-09-045**

On September 19, 2013, the Commission issued Decision (D.) 13-09-045, *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry (Decision)*, which created a new category of transportation charter party carrier (TCP) of passengers called transportation network companies (TNC or TNCs). As part of this Decision, the Commission

asserted jurisdiction over Uber Technologies, Inc. (Uber), reasoning that Uber “is the means by which the transportation service is arranged, and performs essentially the same function as a limousine or shuttle dispatch office.”<sup>1</sup> Yet, in its assertion of jurisdiction, the Commission also decided that Uber was not a TNC.<sup>2</sup> As the TNC industry was in its infancy when this determination was made, the Commission had scant information about Uber’s involvement in the TNC operations so it was understandable, at that time, for the Commission to make such a finding. But since the issuance of D.13-09-045, through a series of rulings and hearings in this and other proceedings, the Commission has learned a great deal more about Uber’s involvement with the TNC operations of its wholly-owned subsidiary, Rasier-CA, LLC. (Raiser-CA), as well as Uber’s involvement with the TCP operations of its wholly-owned subsidiary, UATC, LLC (UATC).

## **1.2. The Follow-Up Investigation**

On June 3, 2015 the *Assigned Commissioner and Administrative Law Judge’s Ruling Ordering Uber Technologies, Inc. to Answer Questions and to Produce Documents* was issued (*June 3, 2015 Ruling*) in order to elicit a greater understanding of Uber’s functions vis-à-vis the TNC operations in California. Specifically, the *June 3, 2015 Ruling* sought clarity regarding the relationship between Uber, Rasier-CA, Rasier LLC (Rasier), and UberX. Uber filed its initial

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<sup>1</sup> D.13-09-045 at 12.

<sup>2</sup> D.13-09-045, Finding of Fact (FOF) # 25: “A TNC is not permitted to itself own vehicles used in the operation or own fleets of vehicles. With this definition in mind, the Commission finds that Uber (in contrast to UberX) is not a TNC.” The concept of what is a personal vehicle was updated by D.16-12-037, *Decision for Phase III.A.: Definition of Personal Vehicle*, to include vehicles that are either owned, leased, rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver. (Ordering Paragraph # 1.)

response on July 1, 2015 (with information redacted on a claim of confidentiality). After the assigned Administrative Law Judge's Ruling dated September 15, 2015 rejected the confidentiality claims, Uber re-served its July 1, 2015 response, without redactions, on September 24, 2015.

On November 19, 2015, the *Assigned Commissioner and Administrative Law Judge's Ruling Ordering Uber Technologies, Inc. to Answer Questions, Follow-Up Questions, and to Produce Documents (November 19, 2015 Ruling)* was issued and sought additional information about the relationship between Uber and its subsidiaries. Uber filed its response on December 11, 2015.

Through these responses, the Commission learned about the various vehicles that were being offered as either a TNC or a TCP service:

**Uber Application<sup>3</sup>**

<b>Vehicle Class</b>	<b>Offered as a TNC</b>	<b>Offered as a TCP</b>
UberX	Yes	Yes
UberXL	Yes	Yes
UberSELECT/UberPLUS	Yes	Yes
UberBLACK	No	Yes
UberSUV	No	Yes
UberLUX	No	Yes

Uber has identified UberBLACK and UberSUV as the classes of vehicle for which TCP services are offered in California.<sup>4</sup>

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<sup>3</sup> Response of Uber (July 1, 2015) at 7.

<sup>4</sup> Response of Uber (December 11, 2015) at 3.

On April 7, 2017, the *Phase III.B. Scoping Memo and Ruling of Assigned Commissioner* was issued and included the regulatory status of Uber as a TCP as one of the issues.

On May 31, 2017, Uber and Uber USA filed their separate opening comments.

On June 12, 2017, the assigned Commissioner issued her *Amended Phase III.B. Scoping Memo and Ruling (June 12, 2017 Scoping Memo)* which raised Uber's potential status as a TNC as an issue for resolution.

On August 15, 2017, Rasier-CA and Uber filed separate opening comments.

Based on all the foregoing information, the Commission must reconsider and modify its earlier determination regarding Uber's status as a TNC and finally resolve the matter of Uber's potential status as a TCP.

### **1.3. The Corporate Formations and Relationships**

These responses also gave the Commission insight into the corporate relationship between Uber and its subsidiaries:

#### **1.3.1. Uber, Rasier-CA, and the TNC Services**

With respect to TNC services, Rasier-CA is the direct wholly-owned subsidiary of Rasier. Rasier is the direct wholly-owned subsidiary of Uber. Rasier-CA was issued a Class P TNC Permit. Rasier-CA enters into a Software License Online Services Agreement with TNC drivers who desire access to the Uber Service. Rasier-CA has been granted a perpetual and non-exclusive license to use Uber's intellectual property, including the Uber application and the registered trademark Uber in its TNC operations. Although Rasier is part of the corporate structure, Rasier does not have operations in California.

Rasier-CA's Certificate of Formation was filed with the Delaware Secretary of State on September 6, 2013.<sup>5</sup> On September 19, 2013, Rasier-CA filed an Application to Register a Foreign Limited Liability Company with the California Secretary of State.<sup>6</sup> Travis Kalanick is listed on Rasier-CA's Statement of Information filed with the California Secretary of State as the sole managing partner, and as Uber's CEO on the California Secretary of State database.<sup>7</sup>

In January 2014, Rasier-CA submitted an application for TNC authority.<sup>8</sup> The e-mail address on the application is [rasier-ca@uber.com](mailto:rasier-ca@uber.com).<sup>9</sup> While Rasier-CA claims control of Rasier-CA, is held by Rasier, LLC,<sup>10</sup> Uber has admitted that Rasier, LLC "does not currently have operations in California."<sup>11</sup> Rasier-CA states it is affiliated with Rasier, LLC and Uber.<sup>12</sup> The proof of insurance that was provided identifies the named insured as Rasier, Rasier-CA, Rasier-DC, LLC, and Rasier-PA, LLC.<sup>13</sup>

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<sup>5</sup> State of Delaware Limited Liability Company Certificate of Formation.

<sup>6</sup> State of California Secretary of State Certificate of Registration, dated September 20, 2013.

<sup>7</sup> [www.sos.ca.gov](http://www.sos.ca.gov) (Corp # C3318029).

<sup>8</sup> See Public Utilities Commission of the State of California Application for Transportation Network Company Authority, PSG 32512.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Response of Uber (July 1, 2015) at 4.

<sup>12</sup> *Id.*

<sup>13</sup> James River Insurance, 12/21/2014 to 03/01/2016, policy number CA 436100CA-0.



On April 7, 2014, the Commission issued Permit No. TCP0032512-P to Rasier-CA. Rasier-CA has identified itself as Uber's subsidiary.<sup>14</sup>

Although it has been given authorization to operate as a TNC, Rasier-CA has no employees and carries no workers compensation insurance. In fact, Uber provides staff on behalf of Rasier-CA, and it is Uber's staff who perform the following functions:

- Executes Rasier-CA's zero tolerance policy.
- Investigates complaints alleging a violation of that policy.
- Investigates and responds to safety incidents.
- Takes action on the status of a driver-partner's account if the driver was driving while impaired.<sup>15</sup>

Many of the pleadings in this proceeding on behalf of Uber, Rasier LLC and Rasier-CA have been filed by the same law firm – Davis Wright Tremaine LLP. More recently, the pleadings on behalf of Uber, Rasier and Rasier-CA have been filed by either Nancy Chung Allred, Lisa P. Tse, Anna Uhls, Robert H. O'Leary, and/or Krishna K. Juvvadi, who are all located at 1455 Market Street, 4<sup>th</sup> Floor, San Francisco, California. Even when the filing is on behalf of Rasier-CA, the responsible attorney lists his or her e mail address @uber.

We have also learned about Uber's involvement in providing TNC services as a result of our contempt proceeding against Uber's wholly-owned subsidiary

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<sup>14</sup> Verified Statement of Rasier-CA, Responding to Order to Show Cause in Rulemaking 12-12-011 at 6 ("Rasier's parent, Uber Technologies, Inc.") See also Comments of Uber Technologies, Inc. on Proposed Decision Modifying Decision 13-09-045 at 3 ("Uber Technologies, Inc., on behalf of its TNC subsidiary, Rasier[.]")

<sup>15</sup> Opening Comments of Rasier-CA (August 15, 2017) at 4-5.

Rasier-CA. On January 15, 2016, the Commission issued D.16-01-014, *Modified Presiding Officer's Decision Finding Rasier-CA, LLC, in Contempt, in Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, and that Rasier-CA, LLC's License to Operate Should be Suspended for Failure to Comply with Commission Decision 13-09-045*, which included information and a discussion regarding Uber's relationship with Rasier-CA, based on admissions Uber made in its filings in federal court actions in California, which the Commission took Official Notice of pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure (Rule or Rules). We set forth those filings as follows and refer to them in this decision as needed:

*National Federation of the Blind of California v. Uber Technologies, Inc.*, (N.D.Cal. 2014), Case No. 3:14-cv-4086:

- The Complaint and First Amended Complaint, filed September 9, 2014, and November 12, 2014, respectively (Complaint, *National*; First Amended Complaint, *National*)
- Proof of Service on Uber Technologies, Inc., filed September 25, 2014 (Proof of Service, *National*);
- Stipulation to Extend Time for Defendant Uber Technologies, Inc. to File a Responsive Pleading, filed October 9, 2014 (Stipulation, *National*);
- Defendant Uber Technologies, Inc.'s Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities in Support Thereof, filed October 22, 2014 (Uber's Motion to Dismiss, *National*);
- Declaration of Michael Colman in Support of Defendant Uber Technologies, Inc.'s Motion to Dismiss, filed October 22, 2014 (Colman Decl., *National*);
- Order Denying Motion to Dismiss, filed April 17, 2015 (Order, *National*); and

- Defendants' Answer to Plaintiffs' First Amended Complaint, filed May 1, 2015 (Defendants' Answer, *National*).

*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2013), Case

No. 13-03826-EMC:

- Defendant Uber Technologies, Inc.'s Answer to Plaintiffs' Class Action Complaint, filed December 19, 2013 (Uber's Answer, *O'Connor*);
- Order Granting Defendant's Motion for Judgment on the Pleadings, filed September 4, 2014 (Order Granting, *O'Connor*);
- Declaration of Michael Colman in Support of Defendant's Motion for Summary Judgment, filed December 4, 2014 (Colman Decl., *O'Connor*); and
- Order Denying Defendant Uber Technologies, Inc.'s Motion for Summary Judgment, filed March 11, 2015 (Order Denying, *O'Connor*).

As necessary, we will cite to the above pleadings where they shed light on Uber's role in controlling the day-to-day operations and managerial responsibilities of the California TNC services.

### **1.3.2. Uber, Uber USA, UATC, and the TCP Services**

The determination of which company is providing the TCP service has turned out to be a more time-consuming endeavor in light of the changing corporate structure.

On October 19, 2010, the Commission's Consumer Protection and Safety Division sent a Notice to Cease and Desist to UberCab, Inc. stating that it was operating as a TCP without Commission authority. Uber did not comply and a Citation F-5195 was issued which Uber then appealed.

In January of 2013, the Commission's Safety and Enforcement Division (SED, now known as the Consumer Protection and Enforcement Division)

entered into a Settlement with Uber that allowed Uber to engage in TCP operations as follows:

- Uber agreed to require any TCP holder that enters into a contract with Uber to provide transportation service not to transport passengers onto airport property unless it obtained the requisite airport authority;
- Uber agreed to require any TCP holder that enters into a contract with Uber to provide transportation service to comply with General Order 115-F regarding the levels and terms of insurance;
- Uber agreed to maintain all records regarding trips that TCP holders provided utilizing Uber's technology within California; and
- Uber agreed to allow Commission representatives access to its offices to inspect Uber's accounts, books, papers, and documents, solely for the enforcement of the terms of the Settlement.

By entering into this Settlement, Uber certainly gave the Commission the impression that Uber was in charge of its TCP operations in California.

But in response to later inquiries from the assigned Commissioner, Uber identified different entities that were involved in the provision of TCP services in California:

UTI has also granted a perpetual and non-exclusive license to Uber USA, LLC (Uber USA) to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber." Uber USA, which, in California, is primarily focused on providing the Uber Service for TCP Holders, provides riders access to the Uber rider app (Uber Rider APP), subject to Terms of Use.<sup>16</sup>

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<sup>16</sup> Response of Uber (July 1, 2015) at 4-5.

Uber explained that Rasier is the direct wholly-owned subsidiary of Uber USA, LLC (Uber USA). Uber USA is the direct wholly-owned subsidiary of Uber.<sup>17</sup> Despite Uber's identification of Uber USA as being involved in providing TCP services, Uber USA, LLC (Uber USA) never filed an application for a TCP permit. Uber USA contracts with Uber for Uber to provide services under "the umbrella of the Uber Service to TCP Holders, for the benefit of the TCP Holders and riders."<sup>18</sup> These services include:

- Enabling riders to see photos of the TCP Holder and the vehicles.
- Enabling riders to file zero tolerance or other complaints against TCP Holders.
- Collecting documents and confirming active TCP Holder status with the Commission.
- Running criminal background and motor vehicle history checks.
- Performing annual vehicle inspections.
- Calculating fares.
- Providing electronic waybills.
- Maintaining trip records for TCP Holders.<sup>19</sup>

In fact, Uber USA has no employees and does not carry workers compensation insurance.<sup>20</sup>

Curiously, despite the above representations about the relationship between Uber and Uber USA with respect to TCP services, it was another Uber

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<sup>17</sup> Response of Uber (July 1, 2015) at 3; and Organizational Chart [Exhibit A attached thereto].

<sup>18</sup> Opening Comments of Uber USA (May 31, 2017) at 11.

<sup>19</sup> *Id.*

<sup>20</sup> Opening Comments of Uber USA (May 31, 2017) at 7.

subsidiary, UATC, that applied for and was issued a Class A TCP Permit.<sup>21</sup> In its permit application, we have learned the following: UATC was formed on January 6, 2015 in Delaware. On November 2, 2016, UATC filed an Application to Register a Foreign Limited Liability Company with the California Secretary of State. In its Statement of Information, UATC lists its address at 1455 Market Street, 4<sup>th</sup> Floor, San Francisco, California, which is the same address for Uber and Rasier-CA.

The permit application also reveals a new TCP corporate structure. UATC is identified as the subsidiary of Rennpferd, LLC (Rennpferd).<sup>22</sup> Rennpferd is identified as the subsidiary of Uber.

Even with the constant change in the identity of the entity providing TPC services, Uber remains the one constant. Also remaining constant is the Software License and Online Services Agreement for TCP services.<sup>23</sup> Although the Agreement states that Uber USA provides lead generation to transportation services providers, this name identification is but a fiction for our analytical purposes since Uber USA never applied for permission from the Commission to provide any transportation services. Nor for that matter did Rennpferd ever apply for permission from the Commission to provide any transportation services. That leaves Uber as the only viable corporate entity that has been engaged in the provision of TCP services in California.

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<sup>21</sup> See Class A Charter-Party Certificate dated June 30, 2017.

<sup>22</sup> UATC Permit Application, Corporate Organizational Chart.

<sup>23</sup> Response of Uber (July 1, 2015), Appendix C.

## **2. Discussion – The Operative Law to Resolve Uber’s Status as a TNC and a TCP**

To help in the resolution of Uber’s status as a TNC and a TCP, we first apply the settled rules for interpreting statutes. The Commission must follow the rule that words be interpreted by their plain meaning. (D.03-04-058.) In D.01-11-031, we established the following additional guidelines to follow in employing the plain-meaning rule:

We look to the well recognized principles of statutory construction. The California Supreme Court has stated: “To interpret statutory language, the courts must ascertain the intent of the legislature so as to effectuate the purpose of the law.” (*California Teachers Assn. v. Governing Bd. of Rialto United School Dist.* (1997) 14 Cal.4<sup>th</sup> 627, 632.) In determining the Legislature’s intent, they are to “scrutinize the actual words of the statute giving them a plain and commonsense meaning.” (*People v. Vallodoli* (1996) 13 Cal.4<sup>th</sup> 590, 597.) “In construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose. Therefore, a practical construction is preferred.” (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4<sup>th</sup> 1133, 1147.) “In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose. . . .” (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159.)

Additionally, we also resolve the question of whether Uber should be deemed a TNC and a TCP by applying the developed factual record to the law regarding parent/subsidiary and alter-ego liability. (*Pan Pacific Sash & Door Co. Greendale Park, Inc.* (1958) 166 Cal.App.2d 652, 658-659.) If a subsidiary is a mere agency or instrumentality of the parent, then the parent is responsible for the actions of the subsidiary. (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1248-1250.) The court uses a non-exhaustive 23-factor test in order to determine the unity of interest between the corporation

and its equitable owner and whether failure to disregard the corporate veil will produce an inequitable result. (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 838-40.)<sup>24</sup> No one characteristic is dispositive although some have been of assistance to the Commission in reaching its decisions.<sup>25</sup> Instead, the court looks to all the circumstances of the case to determine whether the alter ego doctrine should be applied.

A final consideration is whether there would be an inequitable result if the acts in question are treated as those of only one of multiple corporate entities. (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.) If the corporate form is used to “perpetuate a fraud, circumvent a statute, or accomplish . . . an inequitable purpose the courts will ignore the corporate entity and deem the corporations as to be those of the persons or organizations actually controlling the corporation.” (*Troyk v. Farmers Grp. Inc.*, (2009) 171 Cal.App.4th 1305, 1342) “To omit the regulation of the parent and confine regulation to the subsidiary

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<sup>24</sup> The factors are: 1. Under-capitalization; 2. Total absence of corporate assets; 3. Failure to segregate funds; 4. Commingling of funds and assets; 5. Diversion of funds or assets; 6. Treatment by shareholder of corporate assets as own; 7. Identical equitable ownership in two entities; 8. Officers and directors of one entity same as controlled corporation; 9. Employment of same employees; 10. Use of the same officer or business location; 11. Disregard of legal formalities; 12. Failure to maintain minutes; 13. Use of corporation as mere shell; 14. Instrumentality or conduit for single venture of another corporation; 15. Concealment or misrepresentation of the of the responsible ownership, management and financial interests; 16. Concealment or misrepresentation of personal business activities; 17. Failure to maintain arm’s length relationship among related equities; 18. The use of the corporate identity to procure labor, services or merchandise for another entity; 19. The diversion of assets from a corporation by or to a stock holder or other person or entity to the detriment of creditors; 20. The manipulation of corporate assets and liabilities’ in entities so as to concentrate the assets in one and the liabilities in another; 21. The contracting with another with the intent to avoid performance by use of the corporation entity as a shield against personal liability; 22. The use of the corporation as subterfuge for illegal transactions; and 23. The formation and use of a corporation to transfer to it the existing liability.

<sup>25</sup> See, e.g., Decision 86779, 81 CPUC 26; and Decision 14-08-033, 81 CPUC 26.



would be like disregarding the substance and seizing upon the shadow.” (*In Re Key System Transit Lines.*, (July 21, 1953) Decision 48856.)

While this body of law focuses on the question of which corporate entity should bear the ultimate legal liability for the actions committed, we find that this body of law is beneficial in assisting this Commission to determine which entity is, as a matter of law, functioning as the TNC and the TCP, and should be required to register with the Commission as a TNC and a TCP.

### **3. Discussion – Uber is a TNC**

#### **3.1. Uber Fits Within the Meaning of a TNC**

Pursuant to Pub. Util. Code § 5431

(a) As used in this article, a transportation network company is an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

Applying the plain-meaning rule to the phrase “provides prearranged transportation services” leads to the conclusion that Uber fits within the literal definition of a TNC. “Provide” means “to supply or make available,”<sup>26</sup> and Uber’s undisputed actions supply or make the TNC services available. By its own admission, Uber is the lynchpin by which TNC services are “provided.” For example:

- Uber developed, or acquired, and licensed the technology, including various “Uber”-related trademarks and lead-generation technology, for use by “independent” providers

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<sup>26</sup> Merriam-Webster Online Dictionary.

of transportation services to connect with riders seeking transportation.<sup>27</sup>

- TNC drivers who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber or a Transportation Provider Service Agreement with Rasier, LLC, an Uber subsidiary.<sup>28</sup>
- Any passenger wishing transportation service with Rasier-CA via the Uber App must download the passenger version of the Uber App to a smartphone and create an account with Uber.<sup>29</sup>
- Uber ensured that “its TNC subsidiary Rasier LLC (together with Rasier-CA, LLC) procured a commercial insurance policy with \$1 million in coverage per incident.”<sup>30</sup>
- Uber sets the fares it charges riders unilaterally.<sup>31</sup>
- Uber bills its riders directly for the entire amount of the fare charged.<sup>32</sup>

Regardless of the presence of purported independent providers and Uber subsidiaries, Uber’s upfront and continuous involvement serves as the catalyst for providing transportation services in California, thus making it a TNC under the plain meaning of Pub. Util. Code § 5431.

Uber’s arguments to the contrary are unpersuasive. First, Uber’s claim that it is simply a technology company engaged in the business of developing

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<sup>27</sup> Uber’s Opening Comments at 3 (August 15, 2017); Uber’s Opening Comments at 2 (May 31, 2017); Comments of Uber at 3 (January 28, 2013).

<sup>28</sup> Colman Decl. at ¶ 7 (*O’Connor*).

<sup>29</sup> *Id.* at ¶ 5.

<sup>30</sup> Uber’s Comments on ACR at 1, dated April 7, 2014.

<sup>31</sup> Colman Decl. Exhibit 1 thereto (“Payment Terms”) (*O’Connor*).

<sup>32</sup> *Id.*

and licensing software has been previously rejected by this Commission.<sup>33</sup> Second, Uber's suggestion that regulating it would contravene federal policy supporting the growth of Internet-based services has also been previously rejected by this Commission.<sup>34</sup> Third, Uber's claim that it would serve no purpose to require it to register as a TNC since the Commission already regulates Uber's subsidiary, Rasier-CA, as a TNC, is without merit. Uber claims that through an intercompany services agreement with Rasier-CA, Uber provides support services to Rasier-CA "to execute policies and processes, consistent with TNC requirements for the screening of the TNC drivers who partner with Rasier-CA."<sup>35</sup> Additionally, "Uber has adopted additional standards in its Community Standards beyond the minimum TNC requirements in California and other states. Drivers who violate the Community Guidelines may have their accounts deactivated."<sup>36</sup> Rather than behaving as a passive technology company, Uber is actively involved in facilitating the transportation services in California that it claims are being provided by Rasier-CA. The Commission has not had difficulty in asserting jurisdiction over companies even when the business activities are divided or unbundled between separate companies.<sup>37</sup> Given their respective roles in providing TNC services, we see no reason to differentiate between Uber and Rasier-CA. Both Uber and Rasier-CA should be required to receive Commission authority to operate as TNCs.

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<sup>33</sup> D.13-09-045 at 60 (FOF # 2).

<sup>34</sup> *Id.* (FOF #s 1 and 3).

<sup>35</sup> Opening Comments of Uber at 4 (August 15, 2017).

<sup>36</sup> *Id.*, at 5.

<sup>37</sup> See D.96-08-034.

### **3.2. Uber Exercises Extensive Control Over the Day-to-Day Operations of Rasier-CA**

Uber's control over the transportation services provided by Rasier-CA is extensive. The evidence is undisputed that:

- TNC drivers who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber or a Transportation Provider Service Agreement with Rasier, an Uber subsidiary.<sup>38</sup>
- Any passenger wishing transportation service with RasierCA via the Uber App must download the passenger version of the Uber App to a smartphone and create an account with Uber.<sup>39</sup>
- Uber ensured that "its TNC subsidiary Rasier LLC (together with Rasier-CA, LLC) procured a commercial insurance policy with \$1 million in coverage per incident."<sup>40</sup>
- Wayne Ting, Uber's General Manager, verified Rasier-CA's Verified Statement in the hearing on *Order to Show Cause Why Rasier-CA Should Not Be Held in Contempt*.<sup>41</sup>
- Uber sets the fares it charges riders unilaterally.<sup>42</sup>
- Uber bills its riders directly for the entire amount of the fare charged.<sup>43</sup>

In looking at similar control over day-to-day operations, courts have concluded that the subsidiary is a mere instrumentality of the parent. For

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<sup>38</sup> Colman Decl. at ¶ 7 (*O'Connor*).

<sup>39</sup> *Id.* at ¶ 5.

<sup>40</sup> Uber's Comments on ACR at 1, dated April 7, 2014.

<sup>41</sup> D.16-01-014 at 75.

<sup>42</sup> Colman Decl. Exhibit 1 thereto ("Payment Terms") (*O'Connor*).

<sup>43</sup> *Id.*

example, in *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.*, (2013) 217 Cal. App. 4th 1096, 1109, the court held that two corporations were the alter egos of Morgan Creek International (Distributor) and thus liable for failure to pay plaintiff on a movie distribution deal. First, the court determined that there was a significant unity of interest and ownership between Distributor and Morgan Creek International LTD (Guarantor) and Morgan Creek Productions (Parent) because Parent used the two corporations as shells to avoid liability. (*Id.* at 1102.) The owner of the three entities made all the decisions through Parent Corporation. (*Id.* at 1109.) Parent's general counsel negotiated the distribution deals. (*Ibid.*) During the initial arbitration, Parent's legal counsel made all legal decisions for the three entities, and designated its own officer as the most knowledgeable person in the case. (*Id.* at 1103.) The court also determined Parent dominated the management and policies of the other two corporations. (*Ibid.*) Parent provided all the financial services for Distributor and Guarantor. (*Ibid.*) Distributor and Guarantor did not have employees or bank accounts. (*Id.* at 1102-03.) In fact, the court determined that Parent created the system in which Parent received all the money from Distributor's contracts. (*Id.* at 1109.)

Similarly, in *Hub City Solid Waste Servs., Inc. v. City of Compton* (2010) 186 Cal. App. 4th 1114, the court held Owner was the alter ego of his waste management company (Corporation) and thus liable for Corporation's breach of the contract with the City. First, the court found a significant unity of interest and ownership between Owner and Corporation. The court determined Corporation was a shell, for the explicit purpose of entering into the contract with the city. (*Id.* at 1124.) The Corporation did not own equipment for the city's waste management needs such as trucks, facilities, or other equipment. (*Id.* at 1120.) Owner was the sole decision-maker, shareholder, director and officer.

(*Id.* at 1123.) Owner worked directly with the city officials. (*Ibid.*) The same attorneys represented both Owner and Corporation in the contract negotiation with the city, and the subsequent litigation. (*Ibid.*)

In accordance with *Hub City* and *Toho*, we conclude that Uber's control over Rasier-CA's day-to-day operations is so pervasive that Rasier-CA should be deemed the mere agent or instrumentality of Uber.

### **3.3. Uber Makes the Broad Policy Decisions for Rasier-CA**

The following evidence demonstrates that Uber controls Rasier-CA with respect to policy decisions, a factor that courts in *Toho* and *Hub City* considered relevant to their conclusions:

- Uber claims a proprietary interest in its riders, and prohibits its drivers from answering rider queries about booking future rides outside the Uber app, or otherwise soliciting rides from Uber riders.<sup>44</sup>
- Uber exercises control over the qualification and selection of its drivers.<sup>45</sup>
- Uber terminates the accounts of drivers who do not perform up to Uber standards.<sup>46</sup>
- Uber deactivates accounts of passengers for low ratings or inappropriate conduct.<sup>47</sup>

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<sup>44</sup> Colman Decl. Exhibit 1 thereto (License Grant & Restrictions, and Intellectual Property Ownership (*O'Connor*); Colman Decl. Exhibit A ("You understand that you shall not during the term of this Agreement use your relationship with the Company...to divert or attempt to divest any business from the Company that provides lead generation services in competition with the Company or Uber." (*National*).

<sup>45</sup> Colman Decl. Exhibit A (Performance of Transportation Services (*National Federation of the Blind*).

<sup>46</sup> Colman Decl. at ¶ 9 (*O'Connor*).

Also, and similar to Toho and Hub City, in the prior order to show cause why Rasier-CA should not be held in contempt, Uber provided the legal defenses and designated its officer as the person most knowledgeable for Rasier-CA.

Additional case law supports this conclusion that a unity of interest and ownership can be found where, under factual circumstances similar to the relationship between Uber and Rasier-CA, the parent dictates every facet of the subsidiary's business. For example, in *Rollins Burdick Hunter of So. Cal. v. Alexander & Alexander Servs.* (1988) 206 Cal.App.3d 1, the court found A Services (Parent) the alter ego of A & A California (Subsidiary) for the purpose of general jurisdiction over a non-compete dispute. The court explained that Parent handled everything from broad policy decisions to routine matters of day-to-day operations of subsidiary. (*Id.* at 11.) Parent approved the major budgets such as hiring, compensation, and contracts. (*Ibid.*) Parent created the policies, which controlled what Subsidiary, could invest in. (*Ibid.*) Parent handled the majority of management. (*Ibid.*) Parent paid and treated Subsidiary employees as Parent's own. (*Ibid.*) Subsidiary never held board meetings, and board directors were parent's employees. (*Ibid.*)<sup>48</sup>

In light of Uber's singlehanded control over the TNC policy decisions affecting Rasier-CA, the Commission concludes that Rasier-CA is but a mere instrumentality of Uber, and that Uber should be considered a TNC.

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<sup>47</sup> *Id.*

<sup>48</sup> See also *Troyk v. Farmers Grp. Inc.*, (2009) 171 Cal.App.4th 1305, 1341 [the court found Farmers Inter-Insurance Exchange (Farmers Insurance) and FGI Corporation (Parent) were the alter egos of Prematic Service Corporation as the unity of interest and ownership between the three entities was such that the separate personalities ceased to exist].

**3.4. An Inequitable Result, Such as Circumvention of Commission Regulation, Will Result From Failing to Pierce the Corporate Veil and Requiring Uber to Register as a TNC**

As a separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted.” (*Say & Say, Inc. v Ebershoff* (1993) 20 CA 4th 1759, 1767). If the separate corporate form is used to perpetuate a fraud or circumvent a statute, or accomplish some other wrongful purpose . . . an inequitable result will follow and the corporate veil should be pierced.<sup>49</sup> (*Troyk v. Farmers Grp. Inc., supra*, 171 Cal.App.4th 1305, 1342.) One of the narrowly defined circumstances where the corporate form will be disregarded occurs when a corporation is used to avoid the effect of a statute (*Say*, 20 CA 4<sup>th</sup> at 1768). The significant factors in this type of case are the strength of the policy behind the statutory regulation and whether the omission of certain parties was inadvertent or deliberate on the part of the legislative body. (*Ibid.*)

Here, not requiring Uber to register as a TNC allows Uber to avoid the regulations in place to ensure that TNC remit monies to the State based on the revenues generated. Pursuant to Pub. Util. Code § 421:

- (a) The commission shall annually determine a fee to be paid by every passenger stage corporation, charter-party carrier of passengers, pipeline corporation, for-hire vessel operator, common carrier vessel operator, railroad corporation, and commercial air operator, and every other common carrier and related business

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<sup>49</sup> See *H.A.S. Loan Serv. Inc. v McColgan*, (1943) 21 C2d 518, 523 [Court found it would be inequitable to treat the two corporations as separate entities in order for them to avoid regulation by California usury laws]; and *McLoughlin v. L. Bloom Sons Co.* (1962) 206 Cal.App.2d 848, 853. [Court held it inequitable to allow fourth in store in a tightly controlled franchise to disregard bargaining agreement.]



subject to the jurisdiction of the commission, except as otherwise provided in Article 3 (commencing with Section 431 ) of this chapter and Chapter 6 (commencing with Section 5001) of Division 2.

As a TNC is a TCP subcategory, Uber as a TNC falls within the purview of Pub. Util. Code § 421 and should be responsible for paying its fee. The Commission's Transportation and Enforcement Branch (TEB) shall determine what the fee amount should be.

### **3.5. How Long Has Uber Been Operating as a TNC, and Does Uber Owe Back Fees?**

Based on the record developed to date, Uber has been operating as a TNC since, at a minimum, as far back as the fourth quarter of 2013.<sup>50</sup> This past operation as a TNC brings up the question of whether Uber would be responsible for back fees. Pursuant to Pub. Util. Code § 5387.5:

When the commission or an employee of the commission determines that any person or corporation is holding itself out as a charter-party carrier of passengers without a certificate or permit to so operate, the carrier shall pay the commission the fee established pursuant to Section 421 for the period during which it operated without authority, up to a maximum of three years, which fee shall be deposited in the Public Utilities Commission Transportation Reimbursement Account.

The Commission's TEB shall determine the amount of back fees Uber should pay as a TNC to the Public Utilities Commission Transportation Reimbursement Account for the three-year period prior to the issuance of this decision for any

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<sup>50</sup> See TEB data request to Rasier-CA dated July 21, 2017; Rasier-CA's response (identified as containing confidential information) dated August 11, 2017; TEB data request to Rasier-CA dated October 27, 2017; and Rasier-CA's response (identified as confidential) dated November 15, 2017.

TNC permit holders unaffiliated with Rasier-CA that provided TNC service through the Uber platform.

#### **4. Discussion – Uber is a TCP**

##### **4.1. Uber Fits Within the Plain Meaning of a TCP**

Pursuant to Pub. Util. Code § 5360, a TCP is defined to mean:

[E]very person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. Charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.

Applying the plain-meaning rule to the phrase “engaged in” leads to the conclusion that Uber fits within the literal definition of a TCP. “Engaged in” means “involved in [an] activity,”<sup>51</sup> and Uber’s undisputed actions demonstrate that it is involved in the TCP activity. By its own admission, without Uber’s engagement, there would be no TCP operation. For example:

- Uber developed, or acquired, and licensed the technology, including various “Uber”-related trademarks and lead-generation technology, for use by “independent” providers of transportation services to connect with riders seeking transportation.<sup>52</sup>
- Uber then licensed its technology under certain trademarked Uber brand names to its affiliates, including Uber USA.<sup>53</sup>
- Under an intercompany service agreement, Uber provides, on behalf of Uber USA, the following services for the benefit of the TCP holders and riders: enables riders to see photos of the TCP

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<sup>51</sup> Merriam-Webster Online Dictionary.

<sup>52</sup> Opening Comments of Uber at 2 (May 31, 2017).

<sup>53</sup> *Id.*

holder and vehicles; enables riders to file zero tolerance or other complaints against the TCP holders; collects key documents and confirms active TCP holder status with the Commission; runs criminal background and motor vehicle history checks; performs annual vehicle inspections; calculates fares; provides electronic waybills; and maintains trip records for TCP holders.<sup>54</sup>

- Uber's engagement is indeed necessary for TCP services as Uber USA has no employees.<sup>55</sup>

Without Uber's engagement, there would be no TCP services for the TCP holders to provide under the Uber Service. Uber's upfront and continuous engagement in providing TCP services makes Uber a TCP under the plain meaning of Pub. Util. Code § 5360.

Uber's and Uber USA's arguments to the contrary are unpersuasive. First, Uber's claim that it is simply a technology company engaged in the business of developing and licensing software has been previously rejected by this Commission.<sup>56</sup> For the same reason, we reject Uber USA's technology services company argument.<sup>57</sup> Second, despite the claim that the providers of TCP service are independent service providers who already hold TCP licenses from the Commission, it is Uber, on behalf of Uber USA, that is engaged in running the TCP operation. Third, we reject Uber USA's argument that it does not meet the definition of a TCP because it does not own the vehicles that operate on the app.<sup>58</sup> The Commission has found previously that it is not necessary to own the

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<sup>54</sup> Opening Comments of Uber USA at 12 (May 31, 2017).

<sup>55</sup> *Id.*, at 7.

<sup>56</sup> D.13-09-045 at 60 (FOF # 2).

<sup>57</sup> Comments of Uber USA at 3 (May 31, 2017).

<sup>58</sup> *Id.*, at 2.

means by which a service is being provided to be subject to the Commission's jurisdiction.<sup>59</sup> Accordingly, Uber should be required to receive authorization from the Commission to operate as a TCP.

#### **4.2. Uber Exercises Extensive Control Over the Day-to-Day Operations of Uber USA and UATC**

Uber's control over the TCP services provided by Uber USA and UATC is extensive. The evidence is undisputed that :

- TCPs who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber USA.<sup>60</sup> But since Uber USA has never sought authorization to operate in California, the Agreement is, in effect, with Uber, Uber USA's parent company. Also, Uber has not produced a Software License and Online Services Agreement with UATC. Thus, this only leaves Uber as the controlling entity behind the TCP operation.
- Passengers wishing to obtain TCP service must be authorized to use Uber's mobile application for the purpose of obtaining Transportation services.<sup>61</sup>
- Uber issues the driver IDs to each customer (i.e. the driver providing the transportation).<sup>62</sup>
- Uber requires the customer to provide transportation at least once a month to maintain an active driver profile.<sup>63</sup>
- Uber's Driver App provides information about the driver to the end user.<sup>64</sup>

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<sup>59</sup> See D.96-08-034.

<sup>60</sup> Response of Uber (July 1, 2015), Appendix C.

<sup>61</sup> *Id.*, at Section 1.18.

<sup>62</sup> *Id.*, at Section 2.1.

<sup>63</sup> *Id.*

- Uber calculates the fare that the TCP charges;<sup>65</sup> and
- Uber reserves the right to change the fare calculation and to adjust the fare.<sup>66</sup> (Sections 4.2 and 4.3).

In accordance with *Hub City* and *Toho*, we conclude that Uber's control over Uber USA and UATC's operations are so pervasive that Uber USA and UATC should be deemed as the mere agents or instrumentalities of Uber in light of the level of control Uber exercises over the day-to-day operations of Uber USA and UATC.

#### **4.3. Uber Makes the Broad Policy Decisions for Uber USA and UATC**

The following evidence demonstrates that Uber controls Uber USA and UATC with respect to policy decisions, a factor that courts in *Toho* and *Hub City* considered relevant to their conclusions:

- Uber retains the right, at its sole discretion, to deactivate or restrict the use of the Driver App or the Uber Services in the event of a violation of the Agreement, "or for any other reason at the reasonable discretion of Uber."<sup>67</sup>
- Uber's app prompts the user to rate the driver.<sup>68</sup>
- Uber establishes the minimum average acceptable rating for the driver.<sup>69</sup>
- Uber has the right to deactivate a driver's access to the driver App and Uber Services if the rating does not increase above the Minimum Average Rating.<sup>70</sup>

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<sup>64</sup> *Id.*, at Section 2.2.

<sup>65</sup> *Id.*, at Section 4.1.

<sup>66</sup> *Id.*, at Sections 4.2 and 4.3.

<sup>67</sup> *Id.*, at Section 2.4.

<sup>68</sup> *Id.*, at Section 2.6.1.

<sup>69</sup> *Id.*, at Section 2.6.2.

- Uber establishes the driver requirements.<sup>71</sup>
- Uber establishes the vehicle requirements.<sup>72</sup>

In light of Uber's singlehanded control over the TCP policy decision affecting UATC, the Commission concludes that UATC is but a mere instrumentality of Uber.

**4.4. An Inequitable Result, Such as Circumvention of Commission Regulation, Will Result From Failing to Pierce the Corporate Veil and Requiring Uber to Register as a TCP**

As noted above in Section 3.4, failure to require Uber to register as a TCP will allow Uber to continue avoiding the payment of fees and, possibly, back fees. The Commission's TEB should be tasked to determine these fee amounts.

**4.5. How Long Has Uber Been Operating as a TCP and Does Uber Owe Back Fees?**

Based on the record developed to date, Uber has been operating as a TCP since, at a minimum, October 18, 2010.<sup>73</sup> This past operation as a TCP brings up the question of whether Uber is responsible for back fees. We do not require Uber to pay back fees from the date of this decision to 2010 because of the unique circumstances of this proceeding. Although TEB has been certain regarding when Uber's status as a TCP began, it has taken the Commission time to investigate, and evaluate the nature and extent of Uber's involvement in the TCP operation. Because of this delay, the Commission does not believe that Uber

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*, at Section 3.1.

<sup>72</sup> *Id.*, at Section 3.2.

<sup>73</sup> October 19, 2010 is the date of the cease and desist letter that the Commission sent to Uber.

should be required to pay nearly eight years of back fees. Instead, and pursuant to Pub. Util. Code § 5387.5, TEB shall determine the amount of back fees Uber should pay as a TCP to the Public Utilities Commission Transportation Reimbursement Account for the three-year period prior to the issuance of this decision. Yet in making this determination, we stress that it should not serve as precedent to prevent TEB from assessing back fees in other cases, beyond the timeframe set forth in Pub. Util. Code § 5387.5, as well as interest and penalties.

**5. Categorization and Need for Hearing**

This decision confirms that this proceeding is categorized as quasi-legislative and that hearings are not required.

**6. Comments on Proposed Decision**

The proposed decision of Commissioner Randolph in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On April 9, 2018, the following parties served comments: Uber, and San Francisco Taxi Workers Alliance (SFTWA). On April 10, 2018, Bennie Hamilton and Better Dayz, Inc. served comments. On April 16, 2018, SFTWA served its reply comments. As Uber was the only party to file comments in opposition to the decision, we focus our response on Uber's arguments.

Uber fails to acknowledge or even address that the decision sets forth two independent reasons for the Commission to find Uber to be both a TNC and a TCP. The first basis is that under the plain meaning analysis applicable to matters of statutory interpretation, Uber fits within the definition of a TNC as set forth in Pub. Util. Code § 5431 in that it provides (*i.e.* to supply or to make available) prearranged transportation services. Uber also fits within the

definition of a TCP as set forth in Pub. Util. Code § 5360 in that it is engaged (*i.e.* involved) in the transportation of persons by motor vehicles for compensation. That gap in Uber's comments means the Commission would be within its right to adopt the decision -- without regard to any other arguments Uber has presented -- based on the uncontroverted evidence concerning Uber's involvement in the provision of TNC and TCP services.

But since Uber has devoted its comments to the second independent basis for finding Uber is both a TNC and a TCP by virtue of the fact that its subsidiary companies are mere instrumentalities of Uber, this decision will explain why Uber's arguments do not cause the Commission to change its conclusions in this regard. Preliminarily, we note that Uber has devoted a portion of its comments to making arguments that are not supported by citations to the record. This absence of support is fatal to Uber's arguments since it is settled law in California that arguments from counsel do not constitute evidence. (*Fuller v. Tucker* (2000) 84 Cal.App.4<sup>th</sup> 1166, 1173, citing *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4<sup>th</sup> 435, 454.) Thus, while the Commission may disregard outright all arguments lacking the necessary evidentiary support, we do address some of these arguments as they raise larger policy questions that the Commission believes would be beneficial to address.

Uber's first argument is with respect to Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees. It asserts, without any supporting citations, that Rasier-CA has paid all PUCTRA fees associated with all TNC rides in California that occur utilizing the Uber App. Yet even if Uber is correct, and TEB can audit the reported revenues for accuracy, Uber's argument does not address whether other TNC holders unaffiliated with Rasier-CA also provided TNC transportation services while utilizing the Uber App. If so, Uber



would be responsible for those PUCTRA fees. As such, we will modify the decision at Ordering Paragraph 5 to require that Uber provide TEB and the Commission's Fiscal Office with the total intrastate gross revenue amounts by quarter, starting with Q1 2015 through Q1 2018, within 30 days after the issuance of this decision for any TNC permit holders unaffiliated with Rasier-CA that provided TNC service through the Uber platform. The Fiscal Office will send Uber a revised fee statement for the underpaid PUCTRA fees, without interest or penalties. Uber shall pay the unpaid amount within 30 days from receipt of the Fiscal Office's payment due notification.

Uber next asserts that individual TCP independent contractors are required to pay all PUCTRA fees associated with all TCP rides that occur utilizing the Uber App, and that "presumably" these individual TCPs have been making these payments. Uber offers no evidentiary support for this presumption and we expect TEB and the Fiscal Office to investigate and gather the information from Uber to confirm all PUCTRA payments have been paid. As such, we will modify the decision at Ordering Paragraph 6 to require that Uber provide TEB and the Commission's Fiscal Office with the total intrastate gross revenue amounts by quarter, starting with Q1 2015 through Q1 2018, within 30 days after the issuance of this decision. The Fiscal Office will send Uber a fee statement for the unpaid or underpaid PUCTRA fees, without interest or penalties. Uber shall pay the unpaid or underpaid amount within 30 days from receipt of the Fiscal Office's payment due notification.

As an alternative to making Uber register as a TCP, Uber suggests the Commission order Uber USA to register as a TCP and to facilitate the collection of PUCTRA fees associated with TCP rides that occur utilizing the Uber App. While we appreciate Uber's suggestion, we are curious why Uber, itself, did not

have Uber USA register as a TCP. After all, it was Uber who represented nearly three years ago that Uber USA “is primarily focused on providing the Uber Service for TCP Holders.”<sup>74</sup> If Uber truly believed these representations, Uber should have had Uber USA register as a TCP with the Commission, a task it could have accomplished without an order from the Commission.

Uber raises the specter of unintended consequences that would be contrary to the public interest if it is forced to register as a TNC and a TCP. It claims there will be duplicative regulatory compliance which could lead to “millions of dollars in unnecessary and additional operational costs, and the implementation of the necessary operational changes could potentially harm aspects of the TNC service provided in California.”<sup>75</sup> But whether Uber’s corporate structure may result in cumbersome, costly, and/or duplicative compliance with Commission rules and statutory requirements is a problem of Uber’s own design. It was Uber’s decision alone regarding how it would operate its business with the creation of subsidiaries totally lacking in employees and dependent on Uber to run their TNC and TCP operations. We do not have to try and glean the level of difficulty and cost that Uber may encounter in complying with this Commission’s decision and the attendant statutory requirements. Instead, what this Commission needs to concern itself with is the goal of ensuring that the entity that is running both the TNC and the TCP operations – which is Uber – registers as a TNC and a TCP with the Commission. But in reaching this conclusion that Uber must hold the TNC permit, we do not suggest that

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<sup>74</sup> See footnote 16.

<sup>75</sup> Uber’s Comments at 7-8.

Rasier-CA must be divested of its role in the TNC operations. We leave it to Uber to determine the division of the TNC operational responsibilities between itself and its subsidiary.

Uber's claim of legal error regarding the invocation of the alter-ego doctrine is not only unpersuasive, but is also based on reasoning that supports the Commission's conclusion that Rasier-CA, Uber USA, and UATC are mere instrumentalities. Uber asserts that its "primary business is to create technology to promote shared mobility across the transportation industry."<sup>76</sup> Uber's presence in this transportation arena is essential to the TNC operations currently regulated through Uber's subsidiary, Rasier-CA, as well as TCP permit holders who wish to access the Uber platform. Without this Uber-created technology, there would be no TNC operations or TCP enabled operations, and the California transportation services that are provided via Uber would cease to exist. This is why Uber's subsidiaries are mere legal shells that rely on Uber for their policy and management control.

Uber's additional attack on the Commission's reliance on the alter-ego argument is also flawed. It claims that the decision relies on evidence such as common e mail addresses, shared outside counsel representation, shared addresses, and the fact that Uber facilitates the billing processes, and that these factors have been found to be insufficient to establish unity of interest and ownership as a matter of law.<sup>77</sup> In support, Uber cites to *Gerritsen v. Warner Bros. Entertainment, Inc.*,<sup>78</sup> wherein the Court ruled that plaintiff had not adequately

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<sup>76</sup> Uber's comments at 9.

<sup>77</sup> *Id.*, at 13.

<sup>78</sup> 2015 WL 3958723 (C.D. Cal. 2015).

alleged facts to support an alter ego liability theory. But we distinguish *Gerritsen* on two grounds. First, while the Commission did observe that Uber and its subsidiaries have common e mail addresses, share outside counsel representation, and business address, these factors were not critical to outcome of the decision and, in fact, they were not included in the Findings of Fact. Second, *Gerritsen* found that the claim that the subsidiary was completely dominated, directed, and controlled by the parent was a conclusory assertion lacking “any specific facts demonstrating that this is so.”<sup>79</sup> In contrast, the decision sets forth in detail how Uber exercises control over the day-to-day operations of, and makes the broad policy decisions for, Raiser-CA, Uber USA, and UATC.<sup>80</sup>

## **7. Assignment of Proceeding**

Liane Randolph is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. On April 7, 2014, the Commission issued Permit No. TCP0032512-P to Rasier-CA. Rasier-CA has identified itself as Uber’s subsidiary.
2. Rasier-CA enters into a Software License Online Services Agreement with TNC drivers who desire access to the Uber Service.
3. Rasier-CA has been granted a perpetual and non-exclusive license to use Uber’s intellectual property, including the Uber application and the registered trademark Uber, in its TNC operations.

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<sup>79</sup> *Id.*, at \*41.

<sup>80</sup> *Supra*, Sections 3.2, 3.3, 4.2, and 4.3.

4. Rasier, LLC does not have operations in California.
5. TNC drivers who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber or a Transportation Provider Service Agreement with Rasier, LLC, an Uber subsidiary.
6. Any passenger wishing transportation service with Rasier-CA via the Uber App must download the passenger version of the Uber App to a smartphone and create an account with Uber.
7. Uber ensured that “its TNC subsidiary Rasier LLC (together with Rasier-CA, LLC) procured a commercial insurance policy with \$1 million in coverage per incident.”
8. Wayne Ting, Uber’s General Manager, verified Rasier-CA’s Verified Statement in the hearing on *Order to Show Cause Why Rasier-CA Should Not Be Held in Contempt*.
9. Uber sets the fares it charges riders unilaterally.
10. Uber bills its riders directly for the entire amount of the fare charged.
11. Uber claims a proprietary interest in its riders, and prohibits its drivers from answering rider queries about booking future rides outside the Uber app, or otherwise soliciting rides from Uber riders.
12. Uber exercises control over the qualification and selection of its drivers.
13. Uber terminates the accounts of drivers who do not perform up to Uber standards.
14. Uber deactivates accounts of passengers for low ratings or inappropriate conduct.
15. On October 19, 2010, the Commission’s Consumer Protection and Safety Division sent a Notice to Cease and Desist to UberCab, Inc. stating that it was operating as a TCP without Commission authority.

16. In January of 2013, the Commission's SED (formerly known as the Consumer Protection and Safety Division) entered into a Settlement with Uber that allowed Uber to engage in TCP operations as follows:

- Uber agreed to require any TCP holder that enters into a contract with Uber to provide transportation service not to transport passengers onto airport property unless it obtained the requisite airport authority;
- Uber agreed to require any TCP holder that enters into a contract with Uber to provide transportation service to comply with General Order 115-F regarding the levels and terms of insurance;
- Uber agreed to maintain all records regarding trips that TCP holders provided utilizing Uber's technology within California; and
- Uber agreed to allow Commission representatives access to its offices to inspect Uber's accounts, books, papers, and documents, solely for the enforcement of the terms of the Settlement.

17. Uber identified different entities that were involved in the provision of TCP services in California:

UTI has also granted a perpetual and non-exclusive license to Uber USA, LLC (Uber USA) to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber." Uber USA, which, in California, is primarily focused on providing the Uber Service for TCP Holders, provides riders access to the Uber rider app (Uber Rider APP), subject to Terms of Use.

18. Rasier, LLC is the direct wholly-owned subsidiary of Uber USA, LLC (Uber USA).

19. Uber USA is the direct wholly-owned subsidiary of Uber.

20. UATC, LLC, applied for and was issued a Class A TCP Permit.

### **Conclusions of Law**

1. It is reasonable to conclude that Uber should be considered a TNC.

2. It is reasonable to conclude that Uber has been operating as a TNC since, at a minimum, the fourth quarter of 2013.
3. It is reasonable to conclude that Uber should be considered a TCP.
4. It is reasonable to conclude that Uber has been operating as a TCP since, at a minimum, October 19, 2010.
5. It is reasonable to conclude that Rasier-CA should be considered a mere instrumentality of Uber.
6. It is reasonable to conclude that UATC should be considered a mere instrumentality of Uber.
7. It is reasonable to conclude that Uber USA should be considered a mere instrumentality of Uber.

## **O R D E R**

### **IT IS ORDERED** that:

1. Within 30 days after this decision is issued, Uber Technologies, Inc. shall file an application for a Class P Transportation Network Company Permit.
2. If Uber Technologies, Inc. fails to file an application for a Class P Transportation Network Company Permit within 30 days after this decision is issued, the Commission's Transportation Enforcement Branch shall suspend the Class P Transportation Network Company Permit issued to Rasier-CA, LLC.
3. Within 30 days after this decision is issued, Uber Technologies, Inc. shall file an application for a Class A Charter Party Certificate.
4. If Uber Technologies, Inc. fails to file an application for a Class A Charter Party Certificate within 30 days after this decision is issued, the Commission's

Transportation Enforcement Branch shall suspend the Class A Charter Party Certificate issued to UATC, LLC.

5. The Commission's Transportation and Enforcement Branch (TEB) shall determine the back fees Uber Technologies, Inc. (Uber) shall pay as a Transportation Network Company for the three-year period prior to the issuance of this decision. To accomplish this, Uber shall provide TEB and the Commission's Fiscal Office with the total intrastate gross revenue amounts by quarter, starting with Q1 2015 through Q1 2018 within 30 days after the issuance of this decision for any transportation network company (TNC) permit holders unaffiliated with Rasier-CA that provided TNC service through the Uber platform. The Fiscal Office will send Uber a revised fee statement for the underpaid Public Utilities Commission Transportation Reimbursement Account fees, without interest or penalties. Uber shall pay the unpaid amount within 30 days from receipt of the Fiscal Office's payment due notification.

6. The Commission's Transportation and Enforcement Branch (TEB) shall determine the back fees Uber Technologies, Inc. (Uber) shall pay as a Charter-party Carrier for the three-year period prior to the issuance of this decision. To accomplish this, Uber shall provide TEB and the Commission's Fiscal Office with the total intrastate gross revenue amounts by quarter, starting with Q1 2015 through Q1 2018 within 30 days after the issuance of this decision. The Fiscal Office will send Uber a fee statement for the unpaid or underpaid Public Utilities Commission Transportation Reimbursement Account fees, without interest or penalties. Uber shall pay the unpaid or underpaid amount within 30 days from receipt of the Fiscal Office's payment due notification.

7. Rulemaking 12-12-011 remains open.



This order is effective today.

Dated April 26, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

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